Office - Supreme Court, U.S.
FILED
OCT 13 1984
ALEXANDER L. STEVAS
CLERK

No. 84-412

In the

Supreme Court of the United States

OCTOBER TERM, 1984

HOME BUILDERS AND CONTRACTORS ASSOCIATION OF PALM BEACH COUNTY, INC., a Florida corporation, individually and on behalf of all others similarly situated, and Ted Satter Enterprises, Inc., a Florida corporation,

Appellants,

vs.

The BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, Bill Bailey, as Chairman of said Board of County Commissioners, Dennis P. Koehler, Peggy B. Evatt, Frank Foster, and Norman Gregory, as Members of said Board of County Commissioners, and George R. Brockway, Building Official of Palm Beach County, Edgar Howell, Building Official of City of Boynton Beach, Roy Reid, Building Official of City of Delray Beach, and Alvin Butterfield, Building Official of Village of Tequesta,

Appellees.

On Appeal From The Supreme Court Of Florida

MOTION TO DISMISS

CHARLES F. SCHOECH
County Attorney
P.O. Box 1989
West Palm Beach,
Florida 33402
(305) 837-3649
FRED P. BOSSELMAN
NANCY E. STROUD
STEVEN M. ELBOD
BURKE, BOSSELMAN,
FREIVOGEL, WEAVER,
GLAVES & RYAN
Of Counsel
October 10, 1984

EDWARD F. RYAN
BURKE, BOSSELMAN,
FREIVOGEL, WEAVER,
GLAVES & RYAN
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 263-3600
Counsel for Appellees

BEST AVAILABLE COPY

The Scheffer Press, Inc.—(312) 263-6850

QUESTIONS PRESENTED

1. Whether a decision rendered by the Florida Supreme Court, which rests on adequate non-federal grounds and involves no federal constitutional issues, is reviewable by this Court.

2. Whether a substantial federal question is presented with respect to a county impact fee for road improvements when such fee is reasonably related to a legitimate purpose.

TABLE OF CONTENTS

	PAGE
Questions Presented	i
Table of Contents	ii
Table of Authorities	iii
Motion to Dismiss	1
Statement of the Case	2
Argument	4
Conclusion	11

TABLE OF AUTHORITIES

PAGE

CASES:

Agins v. *City of Tiburon*, 447 U.S. 255 (1980) 4

Armstrong v. *City of Tampa*, 106 So.2d 407 (Fla. 1958) 5

Associated Home Builders v. *City of Walnut Creek*, 4 Cal. 3d 633, 484 P.2d 606 (1977) 8

Carmichael v. *Southern Coal & Coke Co.*, 301 U.S. 495 (1937) 8

City of New Orleans v. *Dukes*, 427 U.S. 297 (1976) .. 6

Clark v. *Paul Gray, Inc.*, 306 U.S. 583 (1939) 8

County Board of Arlington County v. *Richards*, 434 U.S. 5 (1977) 9

Ft. Smith Light & Traction Co. v. *Board of Improvement*, 274 U.S. 387 (1927) 8

Herb v. *Pitcairn*, 324 U.S. 117 (1945) 4

Hodel v. *Indiana*, 452 U.S. 314 (1981) 8

Holt Civic Club v. *City of Tuscaloosa*, 439 U.S. 60 (1978) 9, 10

New York ex rel. Bryant v. *Zimmerman*, 278 U.S. 63 (1928) 7

San Antonio Independent School District v. *Rodriguez*, 411 U.S. 1 (1973) 9

PAGE

CONSTITUTIONAL PROVISIONS:

U.S. Const. Amend. XIV ..... *passim*

Fla. Const. Art. VII, § 1(f) (1980) 7

Fla. Const. Art. V, § 3 (1980) 4

STATUTES AND ORDINANCES:

Fla. R. App. Proc. §9.030(a)(2)(A) 5

Palm Beach County Ordinance No. 79-7 (July 9, 1979), as amended ..... *passim*

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

No. 84-412

HOME BUILDERS AND CONTRACTORS ASSOCIATION OF PALM BEACH COUNTY, INC., a Florida corporation, individually and on behalf of all others similarly situated, and Ted Satter Enterprises, Inc., a Florida corporation,

Appellants,

vs.

The BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, Bill Bailey, as Chairman of said Board of County Commissioners, Dennis P. Koehler, Peggy B. Evatt, Frank Foster, and Norman Gregory, as Members of said Board of County Commissioners, and George R. Brockway, Building Official of Palm Beach County, Edgar Howell, Building Official of City of Boynton Beach, Roy Reid, Building Official of City of Delray Beach, and Alvin Butterfield, Building Official of Village of Tequesta,

Appellees.

On Appeal From The Supreme Court Of Florida

MOTION TO DISMISS

Appellees in the above-entitled case move to dismiss the appeal herein on the ground that no federal question was raised in the Supreme Court of Florida or, alternatively, on the ground that no substantial federal question exists.

STATEMENT OF THE CASE

On June 19, 1979, the Board of County Commissioners of Palm Beach County adopted the Fair Share Contribution for Road Improvement Ordinance (the "Fair Share Ordinance").[1] The Fair Share Ordinance imposes an impact fee on new land developments that generate vehicular traffic. The impact fee was enacted by Palm Beach County to provide for the construction and improvements of roads made necessary by the increased traffic generated by such new development.

On August 15, 1979, Appellants filed a complaint in the Circuit Court of Palm Beach County, Florida challenging the validity of the Fair Share Ordinance and seeking declaratory and injunctive relief and damages. After a full trial on the merits, the Circuit Court entered a judgment finding the Fair Share Ordinance to be valid.[2] Appellants then appealed to the Fourth District Court of Appeal of the State of Florida and on October 12,

---

[1] The Fair Share Ordinance, Palm Beach County Ordinance No. 79-7, became effective July 9, 1979. It was amended on April 7, 1981 by Palm Beach County Ordinance No. 81-4 and became effective April 20, 1981. A composite ordinance has been included in the Appendix to Appellants' Jurisdictional Statement filed with this Court on September 20, 1984.

[2] A copy of the written opinion filed by the Circuit Court of Palm Beach County is in the Appendix to Appellants' Jurisdictional Statement at p. A-38.

1983, the District Court of Appeal filed its opinion upholding the validity of the Fair Share Ordinance.[3]

On March 5, 1984, Appellants submitted a Brief on Jurisdiction to the Supreme Court of the State of Florida seeking to invoke that Court's discretionary jurisdiction pursuant to the applicable provisions of the Florida Constitution and the Florida Rules of Appellate Procedure. On June 20, 1984, the Supreme Court of Florida entered its decision declining to accept jurisdiction pursuant to the applicable provisions of the Florida Constitution.[4]

Appellants now seek to invoke the jurisdiction of this Court to review the decision of the Florida Supreme Court.

---

[3] A copy of the District Court of Appeal's opinion is in the Appendix to Appellants' Jurisdictional Statement at p. A-3.

[4] A copy of the Supreme Court of Florida's decision is in the Appendix to Appellants' Jurisdictional Statement at p. A-1.

ARGUMENT

I. THE DECISION OF THE FLORIDA SUPREME COURT RESTED ON ADEQUATE NON-FEDERAL GROUNDS AND INVOLVED NO FEDERAL QUESTIONS.

This Court will not review state court judgments that rest on independent state grounds. *Herb* v. *Pitcairn,* 324 U.S. 117 (1945). Moreover, a state court decision which does not raise a federal question is not appropriate for review by this Court. *Agins* v. *City of Tiburon,* 447 U.S. 255, 259, n. 6 (1980).

The Appellants have clearly characterized the instant appeal as being an appeal from the decision rendered by the Supreme Court of Florida on June 20, 1984, not from the decision of the Florida District Court of Appeal. The Florida Supreme Court decision concerned that Court's determination that it should decline to accept jurisdiction to review the decision of the District Court of Appeal. The Florida Supreme Court was never asked to, and therefore did not, consider the validity of any state statute or local ordinance, including the Fair Share Ordinance, under the Constitution, treaties or laws of the United States. Rather, it was asked by Appellants to determine whether adequate grounds existed under the Constitution and laws of the State of Florida for the exercise of its discretionary jurisdiction. Clearly, no federal question was decided.

The Florida Supreme Court is one of limited jurisdiction. Fla. Const. Art. V, § 3 (1980). It may only hear appeals in the limited circumstances provided by the

Florida Constitution and Rules of Appellate Procedure. In the proceeding below, Appellants requested the Florida Supreme Court to invoke its jurisdiction on the grounds that the District Court of Appeal's decision expressly construed a provision of the federal and state constitutions and conflicted with a decision of the Florida Supreme Court.[5] The Florida Supreme Court decided, based on settled Florida law, that no such express construction or conflict existed[6] and therefore declined to accept jurisdiction. Such a decision is not appropriate for review by this Court.

II. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED.

Even assuming, *arguendo,* that the Florida Supreme Court decision, or any decision rendered by the courts in the proceedings below, raised or involved a federal question, such question is so insubstantial as to make review by this Court inappropriate.

Appellants assert that this appeal should receive plenary consideration by this Court because the Fair Share Or-

---

[5] The Florida Rules of Appellate Procedure provide that the discretionary jurisdiction of the Florida Supreme Court may be sought to review decisions of district courts of appeal that, *inter alia,* "expressly construe a provision of the state or federal constitution" or "expressly and directly conflict with a decision of . . . the [Florida] Supreme Court on the same question of law." Fla. R. App. Proc. §9.030(a)(2)(A)(ii), (iv).

[6] The Florida courts have interpreted the "express construction" provision as requiring an actual and novel construction of a constitutional provision in order to sustain the jurisdiction of the Florida Supreme Court. *See, Armstrong* v. *City of Tampa,* 106 So.2d 407, 409-10 (Fla. 1958).

dinance purportedly violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Appellants do not even pretend that a fundamental right or suspect class distinction exists in the instant case. Accordingly, the Fair Share Ordinance must be upheld if it has any rational basis. *City of New Orleans v. Dukes,* 427 U.S. 297 (1976).

Palm Beach County's purpose in enacting the Fair Share Ordinance is to ameliorate a modest share of the cost of the extensive road network improvements that will be necessary as a result of the phenomenal development and growth rate which Palm Beach County is experiencing. As the record below clearly establishes, Palm Beach County is the most rapidly growing county in the nation. The record also shows that the traffic generated from such growth has created, and will continue to create, the need for costly capital improvements. The Fair Share Ordinance is an attempt by Palm Beach County to finance some of these costs by requiring new land development activity to pay a fee equivalent to, but not in excess of, the pro rata share of the reasonably anticipated expansion costs of new roads and other facilities.

It is particularly revealing to note that Appellants do not now challenge, and indeed never have challenged, the validity or legitimacy of Palm Beach County's goal and purpose in adopting the Fair Share Ordinance.

Essentially, Appellants argue that the Fair Share Ordinance, despite its proper purpose, violates the Equal Protection Clause because it is underinclusive in two separate ways, both of which, when analyzed under the rational basis test, are without merit.

Appellants' first theory is that the Fair Share Ordinance includes only the people who pull building permits in cities covered by the Fair Share Ordinance and not people who pull building permits in cities which have elected to be excluded from the Fair Share Ordinance.[7]

Appellants' second theory is that the Fair Share Ordinance results in a disparity between people who benefit from and people who pay the impact fee. This theory is based on the undeniable fact that roads can be traveled on by anyone and not simply the residents of the zone that are paying the fee.[8]

---

[7] This theory appears to be based on the fact that the Florida Constitution permits municipalities, in the words of Appellants, to "opt out" of county ordinances. The Florida Constitution authorizes non-charter counties such as Palm Beach County to adopt ordinances having county-wide effect, but such ordinances take effect in municipalities only to the extent that the municipality chooses not to adopt a conflicting ordinance. Fla. Const. Art. VIII, § 1(f). However, the validity or constitutionality of the Florida Constitution provision is not now and never has been at issue in this case and, therefore, not a proper issue for review by this Court. *New York ex rel. Bryant* v. *Zimmerman,* 278 U.S. 63 (1928).

Moreover, Appellees note that it is not necessarily true that the Fair Share Ordinance results in a disparity between local governments. Because a municipality that has "opted out" of the Fair Share Ordinance is always free to adopt its own road impact fee, which may be higher or lower than the county's, it is not proper to assume, as Appellants do, that the city resident "pays nothing."

[8] As the District Court of Appeal correctly observed in the proceeding below, this type of argument is frequently made by those attacking impact fees and is generally rejected. *See,* Juris. Statement App. at A-9. Indeed, the

The critical flaw in both of Appellants' arguments becomes clearer when analyzed under the settled equal protection principles established by the United States Supreme Court.

Where no suspect classification or constitutionally protected right is involved, challenges to state or local fees are measured by the same standards as challenges to state taxes. *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 595 (1939). The Court has given states the widest possible latitude in making classifications for tax purposes. *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 509 (1937):

> A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.

The fact that an exaction is limited to a particular geographic subdivision of the state does not create an equal protection violation. *Ft. Smith Light & Traction Co.* v. *Board of Improvement*, 274 U.S. 387, 391 (1927). *See, also, Hodel* v. *Indiana*, 452 U.S. 314, 333 (1981) ("[a] claim of arbitrariness cannot rest solely on a statute's lack of uniform geographic impact"). Nor does the fact that a state allows different local governments to choose their own and differing means of raising revenue violate

---

[8] (Continued)
only case cited by Appellants in support of this theory, *Associated Home Builders* v. *City of Walnut Creek*, 4 Cal. 3d 633, 484 P.2d 606 (1977), actually undermines Appellant's argument. In *Walnut Creek*, the California Supreme Court *validated* a fee for the creation of parks which are, like the roads in the instant case, open to all.

equal protection. *San Antonio Independent School District* v. *Rodriguez,* 411 U.S. 1, 42 (1973) (the Court "does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause"). Finally, it is clear that a state has extraordinarily wide leeway in allocating powers among its local governmental units. *Holt Civic Club* v. *City of Tuscaloosa,* 439 U.S. 60, 72 (1978). And, the fact that actions of one unit may impact nonresidents does not violate equal protection. *County Board of Arlington County* v. *Richards,* 434 U.S. 5 (1977).

That the Fair Share Ordinance contemplates a perfectly permissible local regulation is clear from even a brief review of Supreme Court decisions using the foregoing equal protection principles to uphold state and local regulation.

In *San Antonio Independent School District* v. *Rodriguez, supra,* the Court refused to upset a state's fiscal structure even when the plaintiffs had shown extensive evidence of differing impact on different groups. There, the plaintiffs had proved that the state's scheme of property taxation actually had a discriminatory impact on persons of lower income. The Court reasoned, however, that since the goals were valid and since no fundamental right or suspect class was involved, the discriminatory impact found to exist was not unconstitutional. 411 U.S. at 42. Unlike the *Rodriguez* plaintiffs, Appellants in the instant case have not even presented evidence of actual impacts on different groups but rather have merely pointed to the abstract possibility of differing impacts.

In *County Board of Arlington County* v. *Richards, supra,* the Court, in a *per curiam* decision, upheld local

legislation establishing fees for parking on public streets, which actually prohibited the use of public roads for parking by non-residents. The Appellants here are only being asked to pay a fee to contribute to the cost of roads.

In *Holt Civic Club* v. *City of Tuscaloosa, supra,* the Court upheld state legislation that explicitly gave the voters of one jurisdiction extraterritorial powers to control development in neighboring jurisdictions. Appellants here have only complained of potential and indirect impacts on the residents of other jurisdictions.[9]

The fees and regulations upheld against equal protection challenges in each of the foregoing cases involved differing impacts of apparently great significance and direct consequence. However, the Court reasoned in each case that the rational basis test allows the states to choose fiscal and regulatory systems appropriate to their needs, despite disparities of impact. Certainly the Ordinance at issue in the instant case involves no more disparity of impact than was involved in the above-cited decisions of this Court.

---

[9] Indeed, the impacts alleged by Appellants might not even exist at all. Appellants' argument is premised on the assumption that those who pay the fees will not benefit by road improvements in nearby municipalities which have "opted out." Jurisd. Statement at pp. 6-7. The fact, however, which was clearly established in the proceedings below, is that roads are of countywide benefit. Those who pay the fee will therefore be benefited by nearby road improvements *regardless* of whether such road improvements are within a municipality that has "opted in" or "opted out" of the Fair Share Ordinance.

CONCLUSION

For the foregoing reasons, Appellees respectfully move the Court to dismiss the frivolous and unsubstantiated appeal filed by Appellants.

Respectfully submitted,

CHARLES F. SCHOECH
County Attorney
P.O. Box 1989
West Palm Beach,
Florida 33402
(305) 837-3649

FRED P. BOSSELMAN
NANCY E. STROUD
STEVEN M. ELROD
BURKE, BOSSELMAN,
FREIVOGEL, WEAVER,
GLAVES & RYAN
Of Counsel

EDWARD F. RYAN
BURKE, BOSSELMAN,
FREIVOGEL, WEAVER,
GLAVES & RYAN
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 263-3600
Counsel for Appellees